UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JAMES P. LAPLANTE	:	
	:	
VS.	:	C.A. NO. 07-0062/ML
	:	
YORK INSURANCE COMPANY OF MAINE	:	

PLAINTIFFF JAMES P. LAPLANTE'S PARTIAL OBJECTION TO THE DEFENDANT'S MOTION TO SEVER AND STAY DISCOVERY AS TO THE BAD FAITH CLAIM, COUNT IV

Now comes the plaintiff, James P. Laplante and objects to the portion of the defendant York Insurance Company of Maine's ("York") Motion to Sever and Stay Discovery as to the Bad Faith Claim, Count IV. As grounds for this motion, the plaintiff relies on the attached memorandum of law and supporting exhibit.

WHEREFORE, the plaintiff, James P. Laplante requests that this Court deny defendant York Insurance Company of Maine's Motion to Sever and Stay Discovery as to the Bad Faith Claim, Count IV.

JAMES P. LAPLANTE

By his Attorneys,

DAVID E. MAGLIO & ASSOCIATES, P.C.

/s/ David E. Maglio, Esq.
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CERTIFICATION

I hereby certify that on the 24th day of March, 2008, I caused a true copy of the *Plaintiff's Objection to the Defendant's Motion to Sever and Stay Bad Faith Claim* to be electronically mailed via ECF/CMF to:

C. Russell Bengtson, Esq.
CARROLL, KELLY & MURPHY
One Turks Head Place, Suite 400
Providence, RI 02903
rbengtson@ckmlaw.com

/s/ David E. Maglio, Esq.

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VS.	:	C.A. NO. 07-0062/ML
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YORK INSURANCE COMPANY OF MAINE	:	
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PLAINTIFF JAMES P. LAPLANTE'S MEMORANDUM IN SUPPORT OF HIS OBJECTION TO THE DEFENDANT'S MOTION TO SEVER AND STAY DISCOVERY AS TO THE BAD FAITH CLAIM, COUNT IV

For the reasons set forth below, the plaintiff, James P. Laplante ("Laplante") objects to the defendant York Insurance Company of Maine's ("York") motion to sever and stay discovery as to the Bad Faith Claim, Count IV.

1. Severance of the Bad Faith is Not Automatically Required Under Rhode Island Law.

In 1989, the Rhode Island Supreme Court, in *Corrente v. Fitchburg Mutual Fire Insurance Company*, 557 A.2d 859, 862 (R.I. 1989) the Court stated that "[i]t is inherently prejudicial for a trial justice to decline to sever that [bad faith] claim from a breach-of-contract claim.

However, thirteen years later, in the case of *Skaling v. Aetna Insurance Company*, 799 A.2d 997, 1010 (R.I. 2002) at footnote 7, the Court noted that "[a]lthough the question of whether every claim of bad faith in every case should be severed from the breach-of-contract claim is not now before us, in an appropriate case, a bifurcated trial may be a useful approach."

Judge Lanphear, in the case of *Weeks v. Progressive Ins. Co., 2005 R.I. Super. LEXIS 111* , noted this potential "abrogation" of the bad faith claim severance rule was made in the context of the *Skaling* court's discussion of the need to provide "the insurer with significant procedural protections, including non-disclosure of its file until the completion of the breach-of-contract action." *Skaling, at page 1010.* Judge Lanphear cited other available methods to "further judicial economy and eliminate . . . prejudice. For example, a bifurcated trial combined with sealing some or all of the insurer's claim file, would "eliminate the need for two juries to consider the same evidence, yet preserve the insurer's confidences."

This type of measured, analytical approach should be adopted in the instant case.

2. There is No Support Under Rhode Island Law to Automatically Stay Discovery on the Bad Faith Claim.

None of the cases cited by York mandate a bar to discovery on the bad faith claim. Given that discovery is still ongoing on the breach of contract claim, the better practice would be for this Court to address the issue of whether a discovery request unfairly encroaches on the bad faith claim on an as-needed, request-by-request basis.

Here, for example, York has raised the defense that the "plaintiff's complaint fails to state a claim upon which relief can be granted and therefore this action is barred." (Defendant's Answer, Second Affirmative Defense, attached as **Exhibit "A"**.) York has also raised the defenses of "*res judicata*" and "collateral estoppel" as bars to the plaintiff's claims. (**Exhibit "A"**, Seventh Affirmative Defense.) The facts supporting these defenses are unknown but will be tested through the discovery process. A blanket rule prohibiting discovery on the bad faith claim may cause the improper result of denying the plaintiff information necessary to prosecute the breach of contract action.

Conclusion:

For the foregoing reasons, the plaintiff, James P. Laplante, requests that this Court deny the defendant York Insurance Company of Maine's ("York") motion to sever and stay discovery as to the Bad Faith Claim, Count IV.

JAMES P. LAPLANTE

By his Attorneys,

DAVID E. MAGLIO & ASSOCIATES, P.C.

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